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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

RITCHIE et al

Serial No. 09/920,803

Filed: August 3, 2001

For: SERVING SIGNALS

RECEIVED

Atty. Ref.: 1561-77 AUG 09 2004

TC/A.U.: 2175

Examiner: C. Rones

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August 4, 2004

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AUG 17 2004

Technology Center 2100

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**URGENT CONDITIONAL PETITION UNDER RULES 181, 182, 183
AND/OR REQUEST FOR
RECONSIDERATION/CLARIFICATION AND/OR
WITHDRAWAL OF COMMUNICATION MAILED 07/15/2004**

This request formalizes in writing the undersigned's prior telephone requests to Examiner Rones (and his supervisor) and is also hereby made a conditional petition for relief pursuant to 37 C.F.R. §§ 1.181; 1.182 and/or 1.183 should the request not be favorably considered by Examiner Rones.

The communication mailed July 15, 2004 alleges that the applicant's December 16, 2003 reply (to the Office Action mailed 09/17/2003) was "not fully responsive" due to alleged mis-numbering of claims. The 7/15/2004 communication alleges that the record in this case is unclear about which claims the applicant wishes to pursue. Such allegation is clearly erroneous.

The Examiner's explicit direction on page 2 of the Office Action dated 09/17/2003 recounts the earlier alleged confusion in claim numbering in this record¹ and then explicitly instructs the undersigned: "In all future responses, please refer to pending claims as claims 2-21."

Accordingly, when applicant filed the December 16, 2003 response all pending claims were duly re-numbered 2-21. It is not believed that the undersigned could have been any more clear in designating the claims that are intended for prosecution in this case. Nor could the undersigned have any more explicitly followed the Examiner's instructions for future claim numbering. Furthermore, the undersigned's comments at page 13 of the response filed December 16, 2003 explicitly noted that "as requested by the Examiner, the pending claims have now been re-numbered and treated herein and hereafter as claims 2-21."

In spite of this crystal clear record, the Examiner has now issued a new 7/15/2004 communication some seven months after the response of December 16, 2003 was filed (and approximately ten months after the Office Action of 09/17/2003) alleging that

¹ This continuation application was filed August 3, 2001 as a photocopy of the parent application with claims 1-20 on pages 38-41 and with a concurrent preliminary amendment canceling claims 2-20. However, one or more hand drawn vertical lines may have been drawn through these pages. A substitute specification filed October 4, 2001 (in response to USPTO notice and request) included the only then pending claim 1. A second preliminary amendment filed November 5, 2001 canceled claim 1 and added new claims 21-40. In the June 26, 2003 amendment claims 21-40 were listed as "previously added" (and the status of claims 1-20 as canceled was noted). A portion of this record was recited on page 2 of the 09/17/2003 office action together with the Examiner's explicit direction that the 20 pending claims should thereafter be referred to as claims 2-21 – and this is exactly what was done in the response now at issue filed 12/16/2003. Thus the same 20 new claims have been repeatedly presented herein (originally numbered 21-40 and then as 2-21). There can be no doubt about which claims the applicant wishes to have examined.

“it is unclear what applicant is attempting to do and the record is unclear. Applicant must clear the record and file the appropriate claims and responses.”

However, it is respectfully submitted that the only thing unclear in this record is the communication of 07/15/2004 which itself does not recognize the record herein which does already make it absolutely crystal clear beyond any doubt whatsoever “what the applicant is attempting to do” and that the claims to be examined are now numbered 2-21 as the Examiner has required (instead of 21-40 as originally presented). The applicant has from the very beginning with a preliminary amendment made it clear on the record that new claims were to be pursued and prosecuted in this particular continuation application. Those new claims were initially numbered 21-40 because the applicant understood the application to have been filed with claims 1-20 (2-20 having been cancelled concurrently with the filing and claim 1 having been cancelled when the desired new claim set was added). However, in response to the Examiner’s explicit requirement, those 20 new claims have now been re-numbered as 2-21.

The outstanding 7/15/2004 communication is also unclear concerning the period allowed for response. On the one hand, the 7/15/2004 letter recognizes that it is already long past the maximum six month statutory period for responding to the Office Action of 09/17/2003 (that 6-month response period expired on 03/17/2004 three months after applicant’s 12/16/2003 response was timely filed). However, on the other hand, the Examiner states that this application will become abandoned “unless applicant corrects the deficiency and obtains an extension of time under 37 C.F.R. §1.136(a)”. But, 37

C.F.R. §1.136(a) does not permit any time extension beyond the six month statutory period – and as already recounted above, although the applicant timely filed a response on December 16, 2003 within three months of the Office Action dated 09/17/2003, the Examiner has not provided any notice of alleged non-responsiveness until seven months after the applicant's filing on December 16, 2003 (and ten months after the 09/17/2003 Office Action). Accordingly, it does not appear to be possible to obtain any relevant time extension – and, under the circumstances recounted above, it is respectfully submitted that no such time extension should be necessary or required.

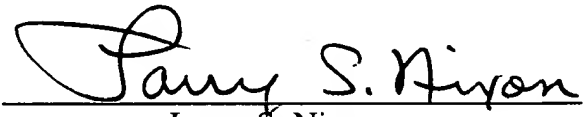
Immediately upon receipt of the 07/15/2004 communication from the Examiner, the undersigned telephoned Examiner Rones on July 19, 2004 to discuss this matter, explain the situation and request some form of suggested relief for further processing of this case. The Examiner agreed to locate the file and investigate and get back to the undersigned. As of July 30, 2004, no such further communication had been received by the undersigned. Therefore further attempts to reach the Examiner and/or the Examiner's supervisor by telephone on Friday July 30, 2004 were attempted, but failed. On Monday, August 2, 2004 the undersigned re-established contact with Examiner Rones who then apparently had the file in hand but had not yet studied it sufficiently to resolve the matter. Examiner Rones apparently still has not had time to consider this matter because no further communication has been yet received from him. Because of the inability to resolve this situation by telephone and the undersigned's upcoming extended vacation, this written petition/request for clarification, withdrawal, etc. is being filed.

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Under the circumstances, it is not believed that any further fee or time extension or the like should be required. However, if such is determined to be required, then the undersigned hereby petitions for whatever relief is necessary to further prosecute the present application and associated fees therefore may be charged to our Account No. 14-1140.

Respectfully submitted,

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,803	08/03/2001	Andrew M. Ritchie	1561-77	7837

23117 7590 07/15/2004

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EXAMINER

RONES, CHARLES

ART UNIT PAPER NUMBER

2175

DATE MAILED: 07/15/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

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1 MO RESP

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DOCKET # 1561-77

MAIL DATE JUL 15, 2004

DUE DATE AUG 15, 2004

FINAL DEADLINE JAN 15, 2005

DOCKETED BY 3/pal



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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DATE MAILED:

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Commissioner for Patents

The reply filed on December 16, 2003 is not fully responsive to the prior Office Action because: Applicant had one claim in the application when a preliminary amendment was filed canceling claims 2-20 when no such claims existed. Then applicant attempts to add new claims 21-40. Then applicant cancels claims 1-20. It is unclear what applicant is attempting to do and the record is unclear. Applicant must clear the record and file the appropriate claims and responses. Since the period for reply set forth in the prior Office action has expired, this application will become abandoned unless applicant corrects the deficiency and obtains an extension of time under 37 CFR 1.136(a).

The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. In no case may an applicant reply outside the SIX (6) MONTH statutory period or obtain an extension for more than FIVE (5) MONTHS beyond the date for reply set forth in an Office action. A fully responsive reply must be timely filed to avoid abandonment of this application.

Charles L. Rones
Primary Examiner
Art Unit: 2175